

July 9, 2002

PUBLIC UTILITIES COMMISSION
Amendment to Uniform System of
Accounts for Gas Utilities Regarding
Annual Report Requirements
(Chapter 410)

NOTICE OF RULEMAKING

Welch, Chairman; Diamond and Nugent, Commissioners

I. INTRODUCTION

Chapter 410 of the Commission's rules establishes a uniform system of accounts and specifies annual report filing requirements for natural gas utilities. In this rulemaking, we revise the rule's description of the April 1st reporting requirements because the current rule does not adequately define natural gas utility filing requirements and has resulted in the filing of very dissimilar annual reports by Maine's three local distribution companies (LDCs). The proposed rule states that annual reporting requirements will be as prescribed by the Commission and that report forms will be sent to each gas utility annually. We have attached a proposed gas annual report form to this notice for comment.

We will also address in this rulemaking the need for confidential treatment for portions of the information the gas utilities include in the annual reports. By addressing confidentiality during the rulemaking process, we hope to receive stakeholder input that will assist us in establishing consistent protective treatment guidelines for natural gas utilities' proprietary information. We seek to address natural gas utility concerns regarding the potential release of damaging, sensitive competitive information while also providing as much information to the public as possible.

II. BACKGROUND

A. Statutory Requirements

Title 35-A M.R.S.A. § 504(2), entitled "Filing of information", requires that a balance sheet, together with other information as the Commission may prescribe, shall be verified by an officer or owner of the public utility and filed with the Commission three months after the accounts have been closed. Section 502(3), entitled "Blank forms furnished", states that the Commission shall prepare suitable blank forms for carrying out the purposes of this Title and shall, when necessary, furnish them to each public utility.

B. Current Rule

The existing rule establishes uniform accounting, annual financial reporting, and auditing provisions for gas utilities. This rulemaking revises the existing rule to better match the current regulatory environment. For instance, Subpart C currently requires that each gas utility file “its annual FERC Form report” with the Commission on or before the first day of April each year. This requirement was established when there was only one natural gas LDC in Maine that, with the Commission’s approval, provided annual report information on a combination of pages from both past and present FERC report forms. However, while this worked when Maine had one LDC which was comfortable with this format, it is not consistent with current state regulation of LDCs (described more fully below) – of which Maine now has three -- and, therefore, no longer makes sense as a filing requirement.

The FERC regulates interstate pipelines, such as Maritimes & Northeast Pipeline, LLC. and Portland Natural Gas Transmission System (PNGTS), and requires annual report filings in its prescribed format. However, since Maine’s intrastate natural gas utilities (i.e. LDCs) are not regulated by, or required to file annual reports with, the FERC, this requirement does not provide them with a logical or clear indication of what information must be filed annually with this Commission. As a result, the filings made by each natural gas utility have varied greatly and do not provide consistent information needed for regulatory oversight. Therefore, in this rulemaking we seek to develop a rule and a form that establish clear, consistent reporting requirements for Maine’s gas utilities.

C. Confidentiality of Gas Utility Annual Report Information

Maine Natural Gas (formerly CMP Natural Gas) (MNG) requested that its 1999 annual report information, which includes detailed financial, system plant, and customer information, be kept confidential due to the increasingly competitive nature of the natural gas industry in Maine. The Commission assigned this matter Docket No. 2000-331 and obtained comments from other LDCs and the Public Advocate in that docket. Maine’s other LDCs concurred with MNG’s request indicating that, for competitive reasons, the annual report information is sensitive and should be kept confidential. Accordingly, Northern Utilities, Inc. and Bangor Gas Co. requested the same treatment for their annual reports. The Hearing Examiner issued orders keeping all 1999, 2000 and 2001 annual reports filed by the LDCs confidential pending further consideration of the issue. See Invitation to Comment and Temporary Protective Order for Natural Gas Utility 1999 Annual Reports (April 13, 2000) and Protective Order Governing Local Distribution Company Annual Reports, Docket No. 2000-331 (Mar. 30, 2001) and (Mar. 29, 2002).

III. PROPOSED RULE CHANGES

A. Section 1: Applicability

Consistent with our current rulemaking practice, we have added a statement of the applicability of this rule. Maine's statutes are written broadly to include every legally authorized entity owning, controlling, operating, or managing gas plant or other facilities used for the transportation, distribution, or sale of natural gas within the State for compensation. See 35-A M.R.S.A. §§ 102(8), (9), (10) and (13). See also, Chapter 45 "Natural Gas Pipeline Utilities" and Chapter 47 "Gas Utilities." Because of the overlapping nature of the descriptions contained in these statutory provisions, we use the term "natural gas utilities" to encompass them all for purposes of this rule.¹

B. Section 2: Uniform Accounting System

This section exists in the current rule and has been revised only to substitute the encompassing term "natural gas utility," for the use of one or both of the overlapping terms "gas utility" and "natural gas pipeline utility."

C. Section 3: Other Records

A section heading was created for this provision, which exists in the current rule, for organizational purposes and easier reference. It has been revised only to use the term "natural gas utility" in place of "gas utility."

D. Section 4: Annual Reports

Section C of the current rule has been reorganized into Section 4, Subsections A, B, C and D.

1. Subsections A and B: Account Closing Date and Annual reports

Subsections A and B are provisions contained in the current rule that have been reworded and separated into distinct subsections for organizational purposes and to improve clarity. We have omitted the reference to an "annual FERC Form" for the reasons discussed above and to allow the use of a form report similar to the one provided in this rulemaking. In addition, Subsection B states that the Commission will send a blank report to each natural gas utility by January 30 each year, tracking recent Commission practice. These provisions are otherwise unchanged from the current rule.

¹ The term "natural gas utility" also appears in 35-A M.R.S.A. § 4710, "Eminent domain," defined for purposes of that section as "an intrastate natural gas pipeline utility or a gas utility other than [propane gas utilities for which the commission's jurisdiction is limited to safety matters by] Section 4702." Our usage herein is not limited to intrastate natural gas pipeline utilities.

2. Subsection C: Interstate natural gas pipelines

Subsection C delineates special reporting provisions for interstate natural gas pipelines. Interstate pipelines are not explicitly addressed in the current rule. Previously, Maine's sole interstate pipeline, Granite State Gas Transmission System, which brought gas into Maine from the south to serve its sole LDC, provided copies of its FERC form on request.² We propose that the rule hereafter state that interstate pipelines operating in Maine may file a copy of their FERC form with us or simply notify the Commission when they have filed their FERC annual report and to indicate how the public may access it. We anticipate that the recently constructed interstate pipelines that operate in Maine, Portland Natural Gas Transmission System and Maritimes and Northeast Pipeline, will recognize the strong degree of public interest in access for Maine citizens to public information about their operations within the state and will be cooperative with this reporting provision. We have used care in drafting this provision to avoid unreasonable or onerous requirements, establishing that these entities may either file a copy of their FERC annual report with the Commission or notify the Commission when it has filed its FERC annual report with instructions on how it may be viewed or obtained.

3. Subsection D: Confidential Information

Subsection D establishes the procedures that may be used by natural gas utilities to obtain protection of confidential information and requires that utilities file a redacted version of the report for public viewing. A utility may request that the Commission issue a protective order to keep certain sensitive information confidential, e.g., not available for public viewing. We note that this request could be made either in advance of making the annual report filing or simultaneous with the filing. However, in the latter case, the utility should be on notice that it will be required, in the event the information governed by the Protective Order differs from its request, to file a revised redacted version.

² Maine's broadly worded statutory definitions of gas utility include interstate pipelines, making them subject to the state's annual reporting obligation. See, 35-A M.R.S.A. §102(8), Gas utility, "...every person.... owning, controlling, operating, or managing any gas plant for compensation within this state..." and 35-A M.R.S.A. § 102(10), Natural gas pipeline utility, "...every person...owning or operating for compensation within this State any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of natural gas, or any person or corporation which has applied to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity or to the Public Utilities Commission for a certificate of authorization to operate a natural gas pipeline within the state." We are comfortable that our annual report provision does not interfere with federal authority.

This subsection also establishes that certain basic information, such as corporate affiliation, contact information, and municipalities in which the utility serves, be considered non-confidential.

Historically, we have not kept annual reporting information confidential, consistent with the premise that public utility activities should be open to public scrutiny. Since public utilities' previously were complete monopolies, this policy had little or no competitive ramifications. However, portions of telephone, electric and natural gas utility service have been opened to competition.

Beginning in the mid-1990's, we adopted a competitive franchise policy for gas utilities serving in Maine that subjects Maine LDCs to competition from one another for customers and service areas. See *Mid-Maine Gas Utilities, Inc. and Central Maine Power Company, Petition for Approval to Furnish Gas Service In and To Areas Not Currently Receiving Service*, Docket No. 96-786 (Dec. 17, 1998). In doing so, we acknowledged that gas utilities compete vigorously in Maine for both residential and commercial/industrial loads with alternative fuels, such as oil, electricity and wood. The competitive franchise policy means that natural gas utilities also compete for customers with other natural gas utilities.

In this context, we recognize that, given competitive realities, gas utility annual report information may provide competitors with sensitive, proprietary information resulting in harm to the gas utility and its ratepayers. Thus, in this rulemaking we intend to explore whether allowing full public access to sensitive annual report information is harmful to gas utilities and their customers (i.e. a portion of the public), and, if so, how it may be best protected. We do not expect that keeping the entire annual report confidential will be warranted. It is our policy and obligation to make public utility information available to the public, as long as the benefits outweigh the harm.

We invite comments addressing the following questions:

- 1) Should any of the information requested on the proposed annual report form be kept confidential? If so, identify what specific portions of the form contain sensitive information and provide detailed reasons why they should be kept confidential, including a description of what harm would occur if the information were not kept confidential.]
- 2) If the Commission determines that confidential treatment of all or part of the annual report is warranted, for what time period should the information remain confidential?

Parties may also comment on our expectation that any portions of the 1999, 2000, and 2001 natural gas utility annual reports that are determined in this rulemaking not to require continued protection, but that are currently being afforded protection, will be released upon the conclusion of this rulemaking.

E. Section 5: Audits

Chapter 710 of the Commission's Rules establishes utility auditing requirement details. We propose to eliminate duplication of those provisions appearing in this rule, inserting instead a simple reference to Chapter 710 for this aspect of utility accounting regulation.

F. Section 6: Waiver

We propose to revise this section to conform the language to other Commission rules.

IV. PROPOSED ANNUAL REPORT FORM: ATTACHMENT A

Attachment A includes a complete copy of the report form we propose for local distribution natural gas utilities' annual reports. In substantial part, this form derives from current and former pages of the FERC Forms 2 and 2A, Annual Reports for Major and Nonmajor Gas Interstate Pipelines. On these reports, we have retained the FERC form page numbering; however, pages that are not currently part of the FERC form have been renumbered and designated as 600-series pages. The 600-series pages include the FERC's discontinued pages involving gas sales reporting, because gas sales are now an LDC function, rather than an interstate pipeline one.³ In addition, the 600-series provides pages for LDCs to report on requirements from other Maine Commission rules, such as promotional and advertising activity (Chapter 830) and other useful information.

The annual report form solicits summary or general information on the following pages. We have listed the FERC page numbers for pages that contain information we propose to include in the Maine annual report, as well as a 600-series of pages for Maine-specific reporting requirements.

- General Corporate Information, pgs. 3, 101, 102, 104-106, and 108;
- Summary Financial Statements:
 - Comparative Balance Sheet, pgs. 110-113;
 - Income Statement, pgs. 114, 115 and 117;
 - Retained Earnings, pgs. 118-119
 - Cash Flows, pgs. 120-122
 - Notes to Financial statements, pg. 22

³ The FERC has eliminated these pages from interstate pipeline companies' reports because, pursuant to federal law, they no longer sell gas commodity.

The following additional pages provide “back-up” or details and support for the information provided on the summary pages:

- Balance Sheet Supporting Schedules, pgs. 200-201, 204-209, 219, 232-233, 256-257, 261-263, 269 and 278;
- Income Statement Supporting Schedules, pgs. 300-301, 304, 320-325;
- Common Schedules, pgs. 350-351, 358, and 520.

Finally, we include in the form the “Maine” pages for reporting information specific to Maine law and for information about local operations that is not provided in the preceding pages of the form.

- Maine Pages:
 - Chapter 830 Report on Political Activity, Institutional Advertising, Promotional Advertising and Promotional Allowances, p. 600;
 - Chapter 820, Affiliate Dealings Reporting, p. 601;
 - Numbers of Customers by Class, p. 602;
 - Numbers of Customers’ Meters by City or Town, p. 603;
 - Liquefied Petroleum Gas Operations Report, p. 604-605;
 - Auxiliary Peaking Facilities Report, p. 606; and
 - Gas Purchases Report, p. 607.

We describe and discuss the purpose of each of these sections below.

A. General Corporate Information

This page includes such information as the utility’s name, address, contact person and phone number, as well as the current officers, directors, and corporate affiliations. This provides general information on the utility and how to contact it. Background on the utility ownership provides a better understanding of how the Maine’s utility interests are positioned in relation to the entire company structure and the regional or national industry.

B. Financial Statements

The form requires financial statements that are the same as those included in an annual statement to shareholders but prepared using account numbers and titles instead of general categories. The financial statements include: balance sheet, income statement, retained earnings statement and statement of cash flows. The balance sheet is specifically required by statute and gives a picture of the utility and its assets and liabilities at year-end. The income statement provides information on the earnings both by utility operations and non-utility operations. This information is also

necessary for us to calculate the annual utility assessments. The cash flow statements provide a picture of where the utility stands on a cash basis. The use of specific account numbers on the forms allows us to compare one LDC to another using consistent account information.

Reporting financial information on this form should not be a hardship to gas utilities, because gas utilities typically prepare these financial statements for their own internal year-end reports. Furthermore, Chapter 410 currently requires each gas utility to use the FERC Uniform System of Accounts for its books, resulting in consistent account numbering.

C. Supporting Schedules

We seek comment on whether the degree of detail that is sought in our proposed annual report form is reasonable or whether more or less detail on any given item is warranted. We have proposed a degree of detail that is less than might have traditionally been required, in an effort not to overburden utilities, on the premise that we could specifically request any additional information that we might require from time to time. However, something more than a cursory degree of detail, such as summary information, allows better regulatory and public understanding and oversight of utility operations. We invite comment on whether this form strikes the appropriate balance of these considerations.

1. Balance Sheet

These schedules provide detailed information about specific accounts included on the balance sheet. In general, the detail will provide regulators with information that will better document the utilities' activities. For example, these schedules provide further detail on deferred regulatory assets and liabilities, identifying items that the utility may be deferring and planning to recover in the future from, or to return to, ratepayers. The plant schedules will provide the dollar level of additions and retirements to utility plant, related to the level of construction activity.

2. Income Statement

These schedules provide detailed information about utility sales by customer class including transportation-only sales. This allows us to monitor the change in revenues from each customer class and determine if there is growth or decline. In addition, there are schedules that provide detail on utility expenses, broken down into operation, maintenance and administrative categories, allowing a comparison of those areas of company operations expense.

3. Common Schedules

This section consists of schedules that support information appearing both on the balance sheet and income statement. Specifically, these

schedules provide detailed information on regulatory expenses (both deferred and expensed), charges for outside professional and other consultative services, and gas accounts. These areas are of concern to the Commission because they can represent a large percentage of total costs incurred by utilities.

D. Maine Pages: 600-607

Pages 600 and 601 provide information that is required by our rules, specifically, Chapter 810, Political Activities, Institutional Advertising, Promotional Advertising and Promotional Allowances, and Chapter 820, Affiliated Transactions. These pages provide a vehicle for gas utilities to comply with these annual reporting requirements.

Page 602 reports information related to the utility's operations, including the number of customer meters by city or town. This information allows a comparison of the growth in numbers of metered customers to the growth in revenue or unit sales.

The remaining pages in this section report sales to industrial customers according to type of service -- interruptible, off-peak and firm -- for both sales and transportation-only. Among other things, this information will assist the Commission in monitoring the impact of interruptible industrial sales activity during the winter season on other energy markets by monitoring the extent of such sales.⁴

E. Removed: Gas Plant Statistical Data

We have omitted the requirement that natural gas utilities file system maps with their annual report because a rulemaking we conducted in 2001, required each natural gas utility to file a copy of its system map with the Commission in specified geographic information system (GIS) format, giving us ready access to a map showing the utility's system and the areas served. See Chapter 140, Utility Service Area and Infrastructure Maps.

V. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the proposed amended rule may be filed with the Administrative Director no later than September 9, 2002. Please refer to Docket No. 2002- 385, when submitting comments. No public hearing on this matter is presently scheduled, but one will be held if requested by any five interested persons. Persons wishing to request a public hearing on this rule must notify the Administrative

⁴ In 2000, the Legislative Task Force to Reduce the Burden of Home Heating Costs on Low Income Households directed the Commission to monitor whether interruptible natural gas services may adversely impact Maine's price of home heating oil during the winter months.

Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018 (telephone: (207)287-3831), on or before August 5, 2002.

In accordance with 5 M.R.S.A. § 8057-A (1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact of this rule.

The Administrative Director shall send copies of this Order and the attached Rule to:

1. All natural gas utilities operating in the State;
2. All persons on the Commission's subscriber list who have requested notice of rulemakings;
3. The Bureau of Operations, Elections and Commissions of the Office of the Secretary of State;
4. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
5. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0015 (20 copies).

Accordingly, it is

O R D E R E D

That the Administrative Director send copies of this Notice of Rulemaking and attached proposed Rule to all persons listed above.

Dated at Augusta, Maine, this 9th day of July, 2002.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Nugent
 Diamond

COMMISSIONER ABSENT: Welch